

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERMAINE BURTON,

Plaintiff,

v.

Case No. 23-cv-11093
Hon. Matthew F. Leitman

JAY SAPH, *et al.*,

Defendants.

/

**ORDER DENYING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT (ECF No. 25)**

Now before the Court is a motion by Defendants Farris and Martino for summary judgment based upon Plaintiff's alleged failure to exhaust administrative remedies. (*See* Mot., ECF No. 25.) Other Defendants previously filed a similar motion. (*See* Mot., ECF No. 13.) In connection with that prior motion, the Court carefully reviewed the relevant history concerning Plaintiff's use of, and purported efforts to use, the MDOC grievance process. Based upon that review, the Court concluded that, under the circumstances of this case, the issue of whether Plaintiff's claims should be barred for failure to exhaust should be decided at a bench trial, not

by way of a motion for summary judgment. The Court adheres to that determination. Accordingly, IT IS HEREBY ORDERED THAT:

1. The motion for summary judgment by Defendants Farris and Martino is **DENIED**.
2. The Court will hold a bench trial to resolve their failure-to-exhaust defense.
3. Farris, Martino, and Plaintiff may conduct discovery limited to the failure-to-exhaust defense for sixty days from the date of this order.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: February 29, 2024

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 29, 2024, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126